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12
13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 SAN FRANCISCO DIVISION

16 GOOGLE LLC,

17 Plaintiff,

18 vs.

19 SONOS, INC.,

20 Defendant.
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Case No. 3:20-cv-06754-WHA

Related to Case No. 3:21-cv-07559-WHA

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
PORTIONS OF ITS REPLY IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Plaintiff Google LLC (“Google”) hereby requests to file under seal portions of its Reply in Support of Motion for Summary Judgment (“Reply”). Specifically, Google requests an order granting leave to file under seal the portions of the document listed below:

Document	Portions to Be Filed Under Seal	Designating Party
Reply	Portions highlighted in yellow	Google
Exhibit 3 to Google's Reply	Portions outlined in red boxes	Google

II. LEGAL STANDARD

Civil Local Rule 79-5(c) provides that a party seeking to file its own documents under seal must file an administrative motion that articulates the applicable legal standard and reasons for keeping a document under seal, includes evidentiary support from a declaration where necessary, and provides a proposed order that is narrowly tailored to seal only the sealable material.

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). In the Ninth Circuit, two different standards may apply to a request to seal a document – namely the “compelling reasons” standard or the “good cause” standard. *Blessing v. Plex Sys., Inc.*, No. 21-CV-05951-PJH, 2021 WL 6064006, at *12 (N.D. Cal. Dec. 22, 2021) (citing *Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2016)). “To seal records in connection with a ‘dispositive’ motion or a motion that ‘more than tangentially relate[s] to the merits of a case,’ ‘compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure’ are required.” *Bronson v. Samsung Elecs. Am., Inc.*, No. C 18-02300 WHA, 2019 WL 7810811, at *1 (N.D. Cal. May 28, 2019) (quoting *Kamakana*, 447 F.3d at 1178-79). The compelling reasons standard applies to any sealing request made in connection with a motion that is “more than tangentially related to the merits of a case.”

1 *Id.* Accordingly, courts in this district apply a “compelling reasons” standard to a sealing request
 2 made in connection with a motion for summary judgment. *See, e.g., Edwards Lifesciences Corp. v.*
 3 *Meril Life Scis. Pvt. Ltd.*, No. 19-CV-06593-HSG, 2021 WL 5233129, at *4 (N.D. Cal. Nov. 10,
 4 2021); *Baird v. BlackRock Institutional Tr. Co., N.A.*, No. 17-CV-01892-HSG, 2021 WL 105619,
 5 at *5 (N.D. Cal. Jan. 12, 2021).

6 **III. THE COURT SHOULD SEAL GOOGLE’S CONFIDENTIAL INFORMATION**

7 Material that is confidential and could harm a litigant’s competitive standing if disclosed
 8 may be sealed under the compelling reasons standard. *Icon-IP Pty Ltd. v. Specialized Bicycle*
 9 *Components, Inc.*, No. 12-cv-03844-JST2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015)
 10 (information “is appropriately sealable under the ‘compelling reasons’ standard where that
 11 information could be used to the company’s competitive disadvantage”); *In re Qualcomm Litig.*,
 12 No. 3:17-CV-0108-GPC-MDD, 2017 WL 5176922, at *2 (S.D. Cal. Nov. 8, 2017) (concluding that
 13 “compelling reasons exist to seal . . . information subject to confidentiality and non-disclosure
 14 provisions” because “[s]uch insight could harm the parties in future negotiations with existing
 15 customers, third-parties, and other entities with whom they do business”).

16 The portions of Google’s Reply highlighted in yellow and the portions of Exhibit 3 outlined
 17 in red boxes contain confidential information regarding highly sensitive features of Google’s
 18 products. Specifically, they detail the operation and system design of Google products and
 19 functionalities that Sonos accuses of infringement. Public disclosure of this information would harm
 20 the competitive standing Google has earned through years of innovation and careful deliberation by
 21 revealing sensitive aspects of Google’s proprietary systems, strategies, designs, and practices to
 22 Google’s competitors. Declaration of Jocelyn Ma ¶ 4. Google has therefore designated this
 23 information as “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” and/or “HIGHLY
 24 CONFIDENTIAL - SOURCE CODE – ATTORNEYS’ EYES ONLY” under the protective order
 25 (Dkt. No. 92). A less restrictive alternative than sealing these exhibits would not be sufficient
 26 because the information sought to be sealed is Google’s proprietary and confidential business
 27 information but is integral to Google’s Reply. *Id.* Thus, Google has compelling reasons to keep
 28 such information under seal. *See Delphix Corp. v. Actifo, Inc.*, No. 13-cv-04613-BLF, 2014 WL

1 4145520, at *2 (N.D. Cal. Aug. 20, 2014) (finding compelling reasons to seal where court filings
 2 contained “highly sensitive information regarding [an entity’s confidential] product architecture and
 3 development”); *Guzik Tech. Enterprises, Inc. v. W. Digital Corp.*, No. 5:11-CV-03786-PSG, 2013
 4 WL 6199629, at *4 (N.D. Cal. Nov. 27, 2013) (sealing exhibit containing “significant references to
 5 and discussion regarding the technical features” of a litigant’s products).

6 **IV. CONCLUSION**

7 For the foregoing reasons, Google respectfully requests that the Court grant Google’s
 8 Administrative Motion to File Under Seal Portions of its Reply in Support of Motion for Summary
 9 Judgment.

10 DATED: February 28, 2023

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ATTESTATION

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5-1, I hereby certify that, on February 28, 2023, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system and email.

DATED: February 28, 2023

By: /s/ Charles K. Verhoeven
Charles K. Verhoeven